

United States Senate

April 11, 2012

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0009

Dear Attorney General Holder:

Recently, a series of disturbing actions were taken by the Election Commissioner for Douglas County, Nebraska, compelling me to request an investigation of that office for possible voter suppression and abridgement of residents registered to vote in the Omaha metropolitan area.

Through an article printed in the March 22, 2012, edition of the *Omaha World-Herald* newspaper, it was learned that the number of polling sites in Omaha had been significantly decreased without any input from the community, allegedly as part of an effort to cut costs and reduce the budget of the Election Commissioner's office. According to reports, 166 of the 352 polling locations will be closed. Numerous requests from community leaders to reconsider this decision were rejected. Additionally, concerns directed to both the Election Commissioner and Nebraska Governor Dave Heineman by Secretary of State John Gale regarding voter confusion caused by these changes during a presidential election year were either ignored or rejected outright.

Yet, just days later, the Election Commissioner mailed out more than 2000 voter cards with incorrect polling site information, stating that he knew the information was incorrect, but mailing the misinformation to registered voters anyway. Upon this data being made public, the Election Commissioner stated that he would send additional notices containing correct polling sites, undoubtedly causing confusion for citizens receiving the mixed correspondence just weeks before the primary election to be held on May 15. While some voters will receive the corrected mailing and act accordingly, others may think it is a duplicate mailing and will, therefore, either not read it thoroughly or simply discard it, then go to the polling site on the original, incorrect card, only to learn they are at the wrong site. And still many more may just stay home due to these confusing double mailings.

After considerable media attention and pressure from the public, the Election Commissioner has now stated that he intends to send early voting forms to all registered voters in the county, at considerable expense. Some estimates of the cost to taxpayers to implement this plan exceed the costs saved by closing nearly half of the polling locations. This raises doubts regarding his stated rationale for closing polling places in the first place – an effort to save money.

The actions taken by the Douglas County Election Commissioner are of concern to me and my constituents because they are certain to adversely affect those residents living in predominantly minority and low-income communities who wish to vote in the upcoming elections.

Despite the concerns raised by the Nebraska Secretary of State, his office has rejected requests from public officials and others to investigate these actions. As a result, I am requesting a thorough investigation by the U.S. Department of Justice of the Douglas County Election Commissioner's Office in Nebraska on the grounds of possible efforts to suppress or deny citizens living in Omaha, Nebraska, their constitutional right to vote under the protections of the Civil Rights Act of 1965.

Thank you for your consideration of this request. I look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ben Nelson", with a long horizontal flourish extending to the right.

E. Benjamin Nelson
United States Senator

EBN:nmk

cc: Deborah Gilg, United States Attorney, District of Nebraska

Enclosures



STATE OF NEBRASKA

JOHN A. GALE
SECRETARY OF STATE

P.O. Box 94608
State Capitol, Suite 2300
Lincoln, NE 68509-4608
Phone 402-471-2554
Fax 402-471-3237
www.sos.state.ne.us

April 10, 2012

RECEIVED APR 11 2012

Senator Heath Mello
State Capitol
1445 K Street Room 1206
Lincoln, NE 68509

Senator Jeremy Nordquist
State Capitol
1445 K Street Room 2004
Lincoln, NE 68509

Senator Gwen Howard
State Capitol
1445 K Street Room 1124
Lincoln, NE 68509

Senator Brenda Council
State Capitol
1445 K Street Room 1120
Lincoln, NE 68509

Senator Tanya Cook
State Capitol
1445 K Street Room 1208
Lincoln, NE 68509

Dear Senators,

Thank you for your letter of April 5, 2012, which we received on April 6. I appreciate your interest in Nebraska election administration, including hearing your concerns about certain actions taken by the Douglas County Election Commissioner. As you know, my office is actively involved with elections in Nebraska and is deeply committed to the election process.

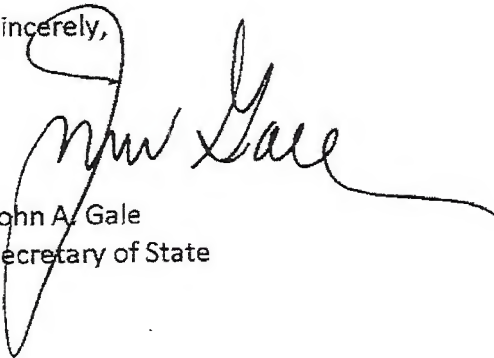
You have requested that my office launch an investigation into the polling place closures in Douglas County and also Commissioner Phipps' election practices as a whole. As you may know, I received a similar request from Nebraskans for Civil Reform. After review and consideration of that request, I decided to decline the request to investigate. Although I

thought a more moderate approach to consolidation of polling locations would cause less voter confusion, I did not discern that a violation of the Election Act had occurred (see enclosed response).

As stated in my letter, I will continue to be involved with the practices and procedures of election officials in Nebraska. I do have authority under the law to review requests to change voting precincts between a primary election and a general election. Election Commissioner Phipps has said he is interested in working with me on that issue. I will closely review, suggest changes where necessary, and grant approvals as needed, to allow the opening of certain polling places in Douglas County for the general election. Commissioner Phipps must first submit an appropriate application, which I am sure will be forthcoming.

If you would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Gale". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John A. Gale
Secretary of State

Nebraska State Legislature



April 5, 2012

Secretary of State John Gale
State Capitol, Suite 2300
P.O. Box 94608
Lincoln, NE 68509-4608

Dear Secretary Gale,

As State Senators representing Nebraskans in Douglas County, we are deeply troubled by the recent actions taken by Douglas County Election Commissioner Dave Phipps. His decision to close more than half of the polling locations in the county just weeks before the 2012 Primary Election is unprecedented, and has a serious impact on our constituents' ability to exercise their fundamental right to vote as guaranteed by Article I, Section 22 of the Nebraska Constitution.

Recent reports by the media of Commissioner Phipps falling deeply behind other counties in the administration of his election duties, in combination with his decision to close polling places, necessitate a full investigation of the Douglas County Election Commission's election administration practices pursuant to your statutory authority in the Election Act. Under Neb. Rev. Stat. § 32-202(1), the Secretary of State has a duty to "[s]upervise the conduct of the primary and general elections in this state." Further, Neb. Rev. Stat. § 32-203(1) provides that you have the power to "[i]nspect, with or without the filing of a complaint by any person, and review the practices and procedures of election commissioners, county clerks, their employees, and other election officials in the conduct of primary and general elections and the registration of qualified electors."

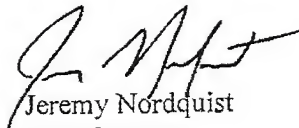
Despite repeated attempts by community leaders in North and South Omaha to work with Commissioner Phipps and efforts by elected officials with the City of Omaha and Douglas County Board to mitigate the impact of the polling place closures, the commissioner has rejected all requests. This is particularly troubling given Commissioner Phipps' own admission at a March 19th meeting with community leaders that the polling place closures disproportionately impact minority and low-income communities within the county. Thus, these polling place closings appear to have a discriminatory effect and impinge on our constituents' fundamental right to vote.

On behalf of our constituents who will be negatively impacted by these developments, we respectfully request that your office launch an investigation not only into the polling place closures but also Commissioner Phipps' election practices as a whole. Your prompt attention to this request is greatly appreciated.

Sincerely,



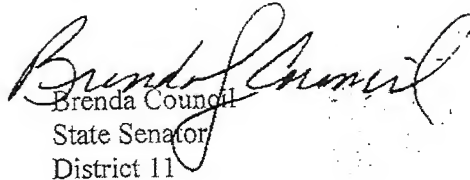
Heath Mello
State Senator
District 5



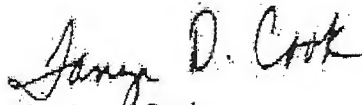
Jeremy Nordquist
State Senator
District 7



Gwen Howard
State Senator
District 9



Brenda Council
State Senator
District 11



Tanya Cook
State Senator
District 13



STATE OF NEBRASKA

JOHN A. GALE
SECRETARY OF STATE

P.O. Box 94608
State Capitol, Suite 2300
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www.sos.state.ne.us

April 6, 2012

Mr. Adam Morfeld
Executive Director
Nebraskans for Civic Reform

Rebecca Gould, J.D.
Executive Director
Nebraska Appleseed

Dear Mr. Morfeld and Ms. Gould:

Thank you for your letter of April 4th requesting an investigation of the Douglas County Election Commissioner's Office pursuant to Neb. Rev. Stat. 32-203. I appreciate your interest in election administration in Nebraska. With the improvements made pursuant to the Help America Vote Act, Nebraska has a very uniform, accessible, reliable, transparent, and modern election system. Even our voter registration system became a statewide interactive web-based state system rather than a hodge-podge of separate, unconnected systems previously. My staff and I work hard to assure that we have smooth election cycles. However, issues and concerns do arise from time to time that need to be addressed in various ways.

Specifically you are expressing complaints about the merger of polling sites in Douglas County and delays of the Douglas County Election Commissioner entering voter registrations into the Central Voter Registration system.

With regard to the merging of precinct areas and consolidation of polling sites, Neb. Rev. Stat. 32-903 in part provides:

... The election commissioner or county clerk shall revise and rearrange the precincts and increase or decrease them at such times as may be necessary to make the precincts contain as nearly as practicable no less than seventy five nor more than one thousand seven hundred fifty voters registered voters voting at the last statewide general election....

As you know, the upper limit is the result of a change in statute in 2011 (LB 449) which passed 47-0. That legislation increased the maximum precinct size from 1,000 voters to the current 1,750. The bill was introduced by Senator John Nelson, a former Douglas County Election Commissioner. There was an active hearing before the Government, Military, and Veterans Affairs Committee. The bill moved easily through the legislature. There certainly should have been broad recognition that the result would be larger voting precincts in certain counties and therefore fewer polling sites.

The Douglas County Election Commissioner is not a state employee, but rather a county employee. However, my staff and I do communicate regularly with all 93 county election officials to preserve a strong working partnership. We don't always agree, but try to create consensus on

important issues. My staff and I did suggest a more moderate approach to Douglas County Election Commissioner Dave Phipps for consolidation of polling locations. I was concerned about voter confusion caused by such a major change in a presidential election year. While hindsight would now suggest that a more cautious change would have been a wiser choice in Douglas County, there is no indication of illegal conduct or malicious intent. Certain adjustments to the precinct boundaries were mandated to accommodate the population changes in the 2010 Census.

Commissioner Phipps has apologized for not seeking public input on the issue of precinct boundary changes; has taken steps to give voters the option of voting by mail and is sending the registered voters an absentee ballot request form; has created a plan for several drop boxes in the county for mail in ballots; and has promised to consider requesting permission from me to change some of the precinct boundaries between the primary and general elections.

I think he is addressing the administrative issues that have been raised about the changes he made to precinct boundaries and voter access to the ballot box in the primary through the several options of in-person early voting, voting by mail, and voting at the poll sites.

Regarding the issue of Douglas County being behind in entering voter registrations into the central database, my office made my concerns known at a meeting with Douglas County election officials and others on February 23rd. Although there are no statutory timelines as to when a registration must be entered, Douglas County was substantially behind when compared to other Nebraska counties.

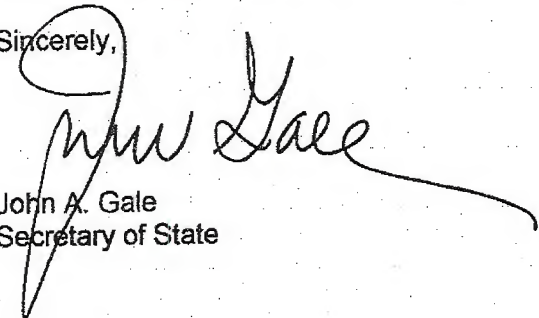
During a conversation with Douglas County officials in late March/early April, my office was informed that any backlog had been reduced from the 40 days behind in early February to about 10 days. It appears that the Douglas County office has taken appropriate actions to reduce any backlog, and ensure a continued timely processing of voter registration applications.

In your letter, while you correctly state that my office has the authority to investigate any local election office, you make no claim that the Douglas County Election Commissioner has violated any state statute. To the contrary, based on the information provided above, it appears that any actions mentioned in your letter are within the authority Nebraska statutes provide to local election officials. While I may disagree with certain actions taken by local officials, I do not believe a violation of the Election Act has occurred and therefore I am declining your request for an investigation of the Douglas County Election Commissioner's office at this time.

I will continue to be involved with the practices and procedures of election officials in Nebraska to ensure fair and accessible elections and will make the necessary approvals to allow the opening of additional polling places in Douglas County for the general election if appropriate application is made.

Should you have other concerns, I am more than happy to discuss them with you.

Sincerely,



John A. Gale
Secretary of State



**NEBRASKANS
FOR CIVIC REFORM**

NCR

April 3, 2012

Mr. John Gale
Secretary of State
State Capitol, 1445 K St., Suite 2300
Lincoln, NE 68509

Dear Secretary Gale,

Nebraskans for Civic Reform and Nebraska Appleseed have been working closely with community members in Douglas County concerning Commissioner Phipps decision to reduce the number of polling locations. As more information has become available about how Commissioner Phipps is carrying out his duties, including indications by your office that Douglas County had fallen behind other counties in entering registered voters into the system, it is becoming more apparent that additional measures may be required to ensure that the administration of elections in Douglas County are in compliance with all state and federal requirements. Accordingly, this letter is a formal request that the Secretary of State's office initiate an official investigation concerning the practices and procedures of Douglas County Election Commissioner Dave Phipps in the administration of elections pursuant to Neb. Rev. Stat. § 32-203(1).

Under Neb. Rev. Stat. § 32-202(1) the Secretary of State's duty is to "[s]upervise the conduct of the primary and general elections in this state." Further, Neb. Rev. Stat. § 32-203(1) provides that the Secretary of State also has the power to "Inspect, with or without the filing of a complaint by any person, and review the practices and procedures of election commissioners, county clerks, their employees, and other election officials in the conduct of primary and general elections and the registration of qualified electors."

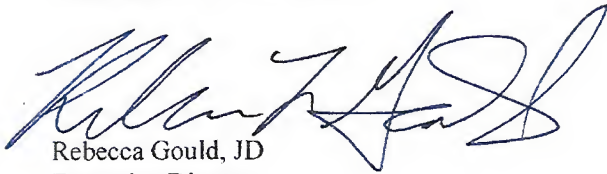
According to our analysis, Commissioner Phipp's polling place closings disproportionately impact low income and minority populations' access to the polls. These actions appear to have a discriminatory effect and impinge upon the fundamental right to vote. Further, we appreciate your efforts to bring your concerns to the attention of the Governor's chief of staff in your email dated March 2nd 2012, and we feel that those concerns also provide additional grounds for an investigation into not only voter registration practices but also Commissioner Phipp's administrative practices as a whole. Given the serious nature of the events that have taken place over the last several weeks, and the overwhelming concern among community members that these changes are confusing and are likely to have the effect of disenfranchising thousands of Nebraska voters, use of your powers to investigate the actions of Commissioner Phipps are appropriate.

Fair and well-administered elections are critical not only to a representative democracy but also to the public perception of the legitimacy of our elections. As the chief election officer of the state we request that you exercise your statutory authority to inspect and review Commissioner Phipp's actions to ensure the residents of Douglas County are provided with fair and accessible elections as guaranteed by Article I, Section 22 of Nebraska's Constitution.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Adam S. Morfeld', with a long horizontal flourish extending to the right.

Adam S. Morfeld
Executive Director
Nebraskans for Civic Reform

A handwritten signature in blue ink, appearing to read 'Rebecca Gould, JD', with a large, stylized 'R' and 'G' and a long horizontal flourish.

Rebecca Gould, JD
Executive Director
Nebraska Appleseed